

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY,

Plaintiff,

v.

ADP MARSHALL, INC., a FLUOR DANIEL
COMPANY, and FIREMAN'S FUND
INSURANCE COMPANY,

Defendants.

CIVIL ACTION NO. 04 CV 10203 PBS

ADP MARSHALL, INC.,

Third Party Plaintiff,

v.

ALLIED CONSULTING ENGINEERING
SERVICES, INC., et al.,

Third Party Defendants.

**UNITED STATES FIDELITY AND GUARANTY COMPANY'S RESPONSE TO
ADP MARSHALL, INC.'S CONCISE STATEMENT OF MATERIAL FACTS
AND USF&G'S CONCISE STATEMENT OF ADDITIONAL MATERIAL FACTS**

Pursuant to Local Rule 56.1 (D. Mass.), the third party defendant, United States Fidelity and Guaranty Company ("USF&G"), hereby responds to ADP Marshall, Inc.'s ("ADP") Concise Statement of Material Facts.

FACTS

1. No dispute.
2. No dispute.

3. No dispute.

4. USF&G does not dispute that the Massachusetts Development Finance Agency (“MDFA”) has *alleged* that Hartford Roofing did not complete its work under the Subcontract. USF&G does dispute the many of the items of alleged incomplete and/or defective work by Hartford Roofing. See Affidavit of Michael S. Anderson, ¶5.

5. No dispute.

6. No dispute.

7. No dispute.

USF&G’S STATEMENT OF ADDITIONAL MATERIAL FACTS

1. At all times relevant to this action, USF&G has been in the business of, among other things, issuing performance and payment surety bonds to various contractors to secure their performance on various construction projects. See Affidavit of Jay Bernstein, ¶2.

2. On or about January 5, 2001, ADP Marshall, Inc. (“ADP”) entered into a subcontract (“the Subcontract”) with The Hartford Roofing Company, Inc. (“Hartford Roofing”) to perform certain roofing work at the project known as the Advanced Technology and Training Manufacturing Center in Fall River, Massachusetts (“the Project”). See Affidavit of Jay Bernstein, ¶3.

3. On or about March 13, 2001, USF&G, as surety, executed a Subcontract Performance Bond (“the Bond”) on behalf of Hartford Roofing, as principal, in favor of ADP, as obligee, for the Project. See Affidavit of Jay Bernstein, ¶4.

4. ADP has failed declared Hartford Roofing to be in default of the Subcontract. See Affidavit of Jay Bernstein. ¶5.

5. Most of the alleged deficiencies claimed by ADP and/or MDFA are not the responsibility of Hartford Roofing. Many of the alleged deficiencies or claims are not within the scope of Hartford Roofing's subcontract, were caused by and are the responsibility of other trades on the Project, are the result of incomplete and/or deficient plans and specification, or are the result of poor construction coordination by ADP on the Project. See Affidavit of Michael S. Anderson, P.E., ¶5.

**UNITED STATES FIDELITY AND
GUARANTY COMPANY,**

By its attorneys,

/s/ Eric H. Loeffler

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